IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 259 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

CADILA CHEMICALS P LTD - Respondent(s)

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Appearance :

MR TANVISH U.BHATT for Petitioner No(s).: 1.

(MR MM PATEL) for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE D.A.MEHTA

HON'BLE MS.JUSTICE H.N.DEVANI

Date : 11/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The following question has been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' under section 256(2) of the Income Tax Act,1961 (the Act).

> "Whether, on the facts and in the circumstances of the case, the question regarding computation of capital employed for granting relief u/s.80J of the Income-tax Act,1961 was rightly decided by the Income-tax Appellate Tribunal?

2 The Assessment Year is 1982-83 and the relevant accounting period is calendar year 1981. The assessee, a limited company claimed relief u/s.80J on total capital employed of Rs.1,08,97,124/-. At the rate of 7.5% the relief worked out to Rs.8,17,134/-. On going through the balance-sheet of the new industrial undertaking of the assessee, namely Ankleshwar Unit,the Assessing Officer found that a sum of Rs.1,08,95,124/- was shown as having been transferred from the Head Office, which was admittedly the old unit. According to the Assessing Officer, because the old unit had certain borrowings in its separate balance-sheet, the total amount available to the new unit had to be proportionately reduced, because the liability of the new

unit was shown as liability of old unit. He, therefore, worked out the said figure at a sum of Rs.59,85,542/- and deducted the same from the aggregate of the assets worked out by the assessee. Thus the figure of total capital employed in the new unit was reduced to Rs.49,09,577/- and accordingly relief u/s.80J @ 7.5% was worked out at Rs.3,68,218/-.

3 Being aggrieved with the aforesaid order, the assessee carried the matter before the CIT (Appeals). The appeal came to be disposed of vide order dated 30.3.1988. The Commissioner (Appeals) accepted the contentions raised on behalf of the assessee that the aggregate of the assets could not be reduced by a sum of Rs. 59,85,547/- for working out the capital employed. The CIT (Appeals) in the process followed the decision rendered by Bombay High Court in the case of *Indian Oil Corporation Limited Vs. S.Rajagopalan, I.T.O. (1973) 92 ITR 241.* He also referred to Circular No.380 dated 10th April,1984 issued by Central Board of Direct Taxes (CBDT) reported in 149 ITR (St).

4 Revenue carried the matter in appeal before the Tribunal against the order of CIT (Appeals). The Tribunal upheld the finding recorded by CIT (Appeals) and dismissed the revenue's appeal.

5 Mr.Tanvish U.Bhatt, learned Standing Counsel appearing on behalf of the applicant-revenue very fairly submitted that in light of Circular issued by CBDT the revenue was not in a position to assail the order of the Tribunal.

6 Section 80J of the Act provides for deduction in respect of profits and gains from newly established industrial undertaking. For the purpose of working out such a deduction at the prescribed rate capital employed in the newly established industrial undertaking is required to be computed. Sub-section (1A) provides that for the purpose of Section 80J the capital employed in an industrial undertaking shall be computed in accordance with clause (II) to clause (IV). As per clause (II) the aggregate of the amount representing the values of the assets as on the first day of the computation period of the undertaking is to be ascertained in the first instance. From the said figure aggregate of the borrowed moneys and debts owed by the assessee are to be deducted as provided in clause (III). For the present it is not necessary to refer to clause (IV). The controversy as to what would constitute the aggregate of borrowed moneys and debts owed is no longer required to be gone into in light of the aforesaid circular issued by CBDT.

7 In the case of *Indian Oil Corporation Limited* (supra) the Bombay High Court has held that for the purpose of arriving at capital employed by the assessee in a particular industrial undertaking one has to deduct from the assets the liabilities of the assessee in respect of that industrial undertaking only. This view has been accepted by the CBDT as stated in the aforesaid Circular No. 380 dated 10th April,1984.

8 In the circumstances, it is not possible to find any infirmity

in the concurrent findings recorded by CIT (Appeals) and Tribunal that only liabilities pertaining to New Industrial Undertaking are to be deducted from the aggregate of the value of the assets of the new industrial undertaking. The question referred is therefore answered in the affirmative i.e., in favour of the assessee and against revenue.

9 The reference stands disposed of accordingly There shall be no order as to costs.

(D.A.Mehta,J)

(H.N.Devani,J)

m.m.bhatt